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Attorneys for the Plaintiff

**UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA**

<p>Mohammad Sarabi</p> <p>Plaintiff,</p> <p>v.</p> <p>Legal Recovery Law Offices and Capital One Bank (USA) N.A.</p> <p>Defendants.</p>	<p>Case Number: 10 CV 1779 W WVG</p> <p>Complaint For Damages</p> <p>Jury Trial Demanded</p>
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FILED
 10 AUG 25 PM 2:55
 CLERK, U.S. DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA
 DEPUTY

HYDE & SWIGART
 San Diego, California

ORIGINAL

CR

INTRODUCTION

1. The United States Congress has found abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors, and has determined that abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy. Congress wrote the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (hereinafter "FDCPA"), to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.
2. The California legislature has determined that the banking and credit system and grantors of credit to consumers are dependent upon the collection of just and owing debts and that unfair or deceptive collection practices undermine the public confidence that is essential to the continued functioning of the banking and credit system and sound extensions of credit to consumers. The Legislature has further determined that there is a need to ensure that debt collectors exercise this responsibility with fairness, honesty and due regard for the debtor's rights and that debt collectors must be prohibited from engaging in unfair or deceptive acts or practices.
3. Mohammad Sarabi, (Plaintiff), through Plaintiff's attorneys, brings this action to challenge the actions of Legal Recovery Law Offices ("LRL") and Capital One Bank (USA) N.A. , (collectively referred to as "Defendants"), with regard to attempts by Defendants to unlawfully and abusively collect a debt allegedly owed by Plaintiff, and this conduct caused Plaintiff damages.
4. Plaintiff makes these allegations on information and belief, with the exception of those allegations that pertain to a plaintiff, or to a plaintiff's counsel, which Plaintiff alleges on personal knowledge.

1 5. While many violations are described below with specificity, this Complaint
2 alleges violations of the statutes cited in their entirety.

3 6. Unless otherwise stated, Plaintiff alleges that any violations by Defendants
4 were knowing and intentional, and that Defendants did not maintain
5 procedures reasonably adapted to avoid any such violation.

6 JURISDICTION AND VENUE

7 7. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331, 15 U.S.C. §
8 1692(k), and 28 U.S.C. § 1367 for supplemental state claims.

9 8. This action arises out of Defendants' violations of the Fair Debt Collection
10 Practices Act, 15 U.S.C. §§ 1692 et seq. ("FDCPA") and the Rosenthal Fair
11 Debt Collection Practices Act, California Civil Code §§ 1788-1788.32
12 ("RFDCPA").

13 9. Because Defendants do business within the State of California, personal
14 jurisdiction is established.

15 10. Venue is proper pursuant to 28 U.S.C. § 1391.

16 PARTIES

17 11. At all times relevant to this matter, Plaintiff was an individual residing within
18 the State of California.

19 12. At all times relevant, Defendants conducted business within the State of
20 California.

21 13. Sometime before June 29, 2010, Plaintiff is alleged to have incurred certain
22 financial obligations.

23 14. These financial obligations were primarily for personal, family or household
24 purposes and are therefore a "debt" as that term is defined by 15 U.S.C.
25 §1692a(5).

26 15. These alleged obligations were money, property, or their equivalent, which is
27 due or owing, or alleged to be due or owing, from a natural person to another
28 person and are therefore a "debt" as that term is defined by California Civil

Code §1788.2(d), and a “consumer debt” as that term is defined by California Civil Code §1788.2(f).

16. Sometime thereafter, but before June 29, 2010, Plaintiff allegedly fell behind in the payments allegedly owed on the alleged debt. Plaintiff currently takes no position as to the validity of this alleged debt.

17. Subsequently, but before June 29, 2010, the alleged debt was assigned, placed, or otherwise transferred, to Defendants for collection.

18. On or about June 29, 2010, Defendants mailed a dunning letter to Plaintiff. A few days later, Plaintiff received that letter.”

19. This communication to Plaintiff was a “communication” as that term is defined by 15 U.S.C. § 1692a(2), and an “initial communication” consistent with 15 U.S.C. § 1692g(a).

20. This communication was a “debt collection” as Cal. Civ. Code 1788.2(b) defines that phrase, and an “initial communication” consistent with Cal. Civ. Code § 1812.700(b).

21. Subsequently, but within the thirty-day period described in 15 U.S.C. § 1692(a), Plaintiff notified Defendants in writing, that this alleged debt, or some portion of it, was disputed.

FACTUAL ALLEGATIONS

22. At all times relevant to this matter, Plaintiff was an individual residing within the State of California.

23. At all times relevant, Defendants conducted business within the State of California.

24. Sometime before June 29, 2010, Plaintiff is alleged to have incurred certain financial obligations.

25. These financial obligations were primarily for personal, family or household purposes and are therefore a “debt” as that term is defined by 15 U.S.C. §1692a(5).

- 1 26. These alleged obligations were money, property, or their equivalent, which is
2 due or owing, or alleged to be due or owing, from a natural person to another
3 person and are therefore a “debt” as that term is defined by California Civil
4 Code §1788.2(d), and a “consumer debt” as that term is defined by California
5 Civil Code §1788.2(f).
- 6 27. Sometime thereafter, but before June 29, 2010, Plaintiff allegedly fell behind
7 in the payments allegedly owed on the alleged debt. Plaintiff currently takes
8 no position as to the validity of this alleged debt.
- 9 28. Subsequently, but before June 29, 2010, the alleged debt was assigned,
10 placed, or otherwise transferred, to Defendants for collection.
- 11 29. Subsequently, but before June 29, 2010, Defendant Capital One Bank hired
12 Defendant LRL, a law firm, to collect the debt on behalf of Defendant Capital
13 One Bank, or the alleged debt was assigned, placed, or otherwise transferred,
14 to Defendant Capital One Bank for collection.
- 15 30. Defendant Capital One Bank is vicariously liable for the illegal actions of
16 Defendant LRL while Defendant LRL was engaged in collecting Plaintiff’s
17 alleged debt for Defendant Capital One.
- 18 31. On or about June 29, 2010, Defendant LRL mailed a dunning letter to
19 Plaintiff. A few days later, Plaintiff received that letter.
- 20 32. This communication to Plaintiff was a “communication” as that term is
21 defined by 15 U.S.C. § 1692a(2), and an “initial communication” consistent
22 with 15 U.S.C. § 1692g(a).
- 23 33. This communication was a “debt collection” as Cal. Civ. Code 1788.2(b)
24 defines that phrase, and an “initial communication” consistent with Cal. Civ.
25 Code § 1812.700(b).
- 26 34. Subsequently, but within the thirty-day period described in 15 U.S.C. §
27 1692(a), Plaintiff notified Defendant LRL in writing, that this alleged debt, or
28 some portion of it, was disputed, specifically inquiring into the \$320 charged

1 for alleged Court Costs, when LRL had not incurred any court costs to date
2 and Capital One was not legally entitled to any alleged court costs.

3 35. On or about July 15, 2010, Defendant LRL responded to Plaintiff's written
4 dispute with a purported verification of the alleged debt by sending out a form
5 letter claiming the entire balance, including the \$320 in court costs, was valid.

6 36. Defendant LRL lacked any meaningful involvement in its attempts to collect
7 Plaintiff's alleged debt and/or provide verification of the alleged debt. If
8 Defendant LRL had properly investigated Plaintiff's dispute, it would have
9 discovered that Plaintiff did not owe any court costs, but that Defendant
10 Capital One actually owed Plaintiff \$320 for filing fees in a previous State
11 collection matter.

12 37. Through this conduct, Defendants used a false, deceptive, or misleading
13 representation or means in connection with the collection of a debt.
14 Consequently, Defendants violated 15 U.S.C. § 1692e and 15 U.S.C. §
15 1692e(10).

16 38. Through this conduct, Defendants used an unfair or unconscionable means to
17 collect or attempt to collect any debt. Consequently, Defendants violated 15
18 U.S.C. § 1692f.

19 39. Because this violated certain portions of the federal Fair Debt Collection
20 Practices Act as these portions are incorporated by reference in the Rosenthal
21 Fair Debt Collection Practices Act, through California Civil Code § 1788.17,
22 this conduct or omission violated Cal. Civ. Code § 1788.17.

23 40. Defendant Capital One actually previously filed a State court collection
24 lawsuit against Plaintiff. Plaintiff disputed the debt owed and actively
25 defended the action. As a result of Defendant Capital One not being able to
26 prove the account or the amount alleged owed, Defendant Capital One
27 unilaterally dismissed the State court action, while facing sanctions of over
28 \$1,000. Despite having lost the State case, Defendant Capital One and

1 Defendant LRL are now attempting to collect \$320 in court costs not legally
2 owed to either Defendant.

3 41. Through this conduct, Defendants used a false, deceptive, or misleading
4 representation or means in connection with the collection of a debt.
5 Consequently, Defendants violated 15 U.S.C. § 1692e and 15 U.S.C. §
6 1692e(10).

7 42. Through this conduct, Defendants made a false representation concerning the
8 character, amount, or legal status of a debt. Consequently, Defendants
9 violated 15 U.S.C. § 1692e(2)(A).

10 43. Through this conduct, Defendants threatened to take action that cannot legally
11 be taken or that is not intended to be taken. Consequently, Defendants
12 violated 15 U.S.C. § 1692e(5).

13 44. Through this conduct, Defendants used an unfair or unconscionable means to
14 collect or attempt to collect any debt. Consequently, Defendants violated 15
15 U.S.C. § 1692f.

16 45. Because this violated certain portions of the federal Fair Debt Collection
17 Practices Act as these portions are incorporated by reference in the Rosenthal
18 Fair Debt Collection Practices Act, through California Civil Code § 1788.17,
19 this conduct or omission violated Cal. Civ. Code § 1788.17.

20 **COUNT I**

21 **FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)**

22 **15 U.S.C. §§ 1692 ET SEQ.**

23 46. Plaintiff repeats, re-alleges, and incorporates by reference, all other
24 paragraphs.

25 47. The foregoing acts and omissions constitute numerous and multiple violations
26 of the FDCPA, including but not limited to each and every one of the above-
27 cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq.
28

1 48. As a result of each and every violation of the FDCPA, Plaintiff is entitled to
 2 any actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in
 3 an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and,
 4 reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from
 5 each and every defendant, jointly and severally.

6 COUNT II

7 ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT (RFDCPA)

8 CAL. CIV. CODE §§ 1788-1788.32

9 49. Plaintiff repeats, re-alleges, and incorporates by reference, all other
 10 paragraphs.

11 50. The foregoing acts and omissions constitute numerous and multiple violations
 12 of the RFDCPA, including but not limited to each and every one of the above-
 13 cited provisions of the RFDCPA, Cal. Civ. Code §§ 1788-1788.32

14 51. As a result of each and every violation of the FDCPA, Plaintiff is entitled to
 15 any actual damages pursuant to Cal. Civ. Code § 1788.30(a) against each
 16 Defendant; statutory damages for a knowing or willful violation in the amount
 17 up to \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b) against each
 18 Defendant; and reasonable attorney's fees and costs pursuant to Cal. Civ.
 19 Code § 1788.30(c) from each and every defendant, jointly and severally.

20 PRAYER FOR RELIEF

21 WHEREFORE, Plaintiff prays that judgment be entered against Defendant, and
 22 Plaintiff be awarded damages from Defendant, as follows:

- 23 • An award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. §
 24 1692k(a)(2)(A) against each Defendant;
- 25 • An award of costs of litigation and reasonable attorney's fees, pursuant
 26 to 15 U.S.C. § 1692k(a)(3) against each Defendant;
- 27 • An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code
 28 § 1788.30(b) against each Defendant;

- An award of costs of litigation and reasonable attorney's fees, pursuant to Cal. Civ. Code § 1788.30(c) against each Defendant.

52. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Date: 8/3/10

Hyde & Swigart

By: [Signature]
Joshua B. Swigart
Attorneys for Plaintiff

HYDE & SWIGART
San Diego, California

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Mohammad Sarabi

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Hyde & Swigart
411 Camino Del Rio South Suite 301, San Diego, CA 92108

DEFENDANTS

Legal Recovery Law Offices and Capital One Bank (USA)
N.A.

County of Residence of First Listed Defendant: San Diego
(IN U.S. PLAINTIFF CASES ONLY) CALL

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

10 CV 1779

W WVG

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. § 1692 et seq

Brief description of cause:
FDCPA

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$
75,001.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

8/25/10

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

17332

AMOUNT

\$350

APPLYING IFP

JUDGE

MAG. JUDGE

ORIGINAL

Court Name: USDC California Southern
Division: 3
Receipt Number: CAS017332
Cashier ID: bhartman
Transaction Date: 08/25/2010
Payer Name: HYDE AND SWIGART

CIVIL FILING FEE
For: SARABI V LEGAL RECOVERY LAW OF
Case/Party: D-CAS-3-10-CV-001779-001
Amount: \$350.00

CHECK
Check/Money Order Num: 4052
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

There will be a fee of \$45.00
charged for any returned check.